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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FILED

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NP  
(5)

Bin Li

Plaintiff,

vs.

*Michael Chertoff*, Secretary  
of the Department of Homeland Security;  
*Emilio T. Gonzalez*, Director of the U.S.  
Citizenship & Immigration Services;  
*Robert S. Mueller*, Director of Federal  
Bureau of Investigation;

Defendants.

2007 NOV -1 A 11: 21  
C07 05564  
Case No. HRL  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

CHRL

PLAINTIFF'S ORIGINAL COMPLAINT FOR WRIT IN THE NATURE OF  
MANDAMUS & DECLARATORY JUDGEMENT

NOW come the Plaintiff, Bin Li, in the above-captioned matter, and hereby states as follows:

1. This action is brought against the Defendants to compel action on the clearly delayed processing of an I-485 Application filed by the Plaintiff, Bin Li. The application was filed and remains within the jurisdiction of the Defendants, who have improperly delayed processing the application to Plaintiff's detriment.

PARTIES

2. Plaintiff, Bin Li, resides at 41686 Joyce Avenue, Fremont, CA 94539, is the beneficiary of an I-485, Application to Register Permanent Resident or Adjust Status, filed with the USCIS.
3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Homeland Security. 8 USC §1103(a). More specifically, the Secretary of the Department of Homeland Security is responsible for the adjudication of applications for nonimmigrant visas filed pursuant to the Immigration and Nationality Act (INA). The U.S. Citizenship & Immigration Services is an agency within the Department of Homeland Security to whom the

Secretary of the Department of Homeland Security's authority has in part been delegated, and is subject to the Secretary of the Department of Homeland Security's supervision.

4. Defendant Emilio T. Gonzalez is the Director of the U.S. Citizenship & Immigration Services (USCIS) and an official generally charged with supervisory authority over all operations of the USCIS with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B).
5. Defendant Robert S. Mueller, director of the Federal Bureau of Investigation, is an official generally charged with authority over all operations of the FBI.

#### JURISDICTION

6. Jurisdiction in this case is proper under 28 USC §1331 and 1361, 5 USC §701 *et seq.*, and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

#### VENUE

7. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities.

#### EXHAUSTION OF REMEDIES

8. The Plaintiff has exhausted his administrative remedies. The Plaintiff has supplied the USCIS documents that clearly establish his eligibility to Register Permanent Resident or Adjust Status.

#### CAUSE OF ACTION

9. The Plaintiff properly filed an application I-485, Application to Register Permanent Resident or Adjust Status, pursuant to Section 245 of the Immigration & Naturalization Act.
10. This petition, along with supporting documentation, was filed in August 2005. Fingerprints were submitted to the USCIS in March, 2006. The plaintiff had called USCIS several times in 2006, and was informed that his background check had not been completed and therefore was unable to approve the petition.
11. The Plaintiff asked help twice from U.S. House of Representative in Fremont, CA 94539 in August, 2006 and February 2007 for the FBI background check. The Plaintiff was informed that the background check was started in September 2005 and had not been completed.

12. On or about June 28, 2007, Plaintiff appeared before the USCIS San Francisco District Office in order to inquire information about the status of his case, and the Plaintiff was told that the FBI had still not completed his background check.
13. The Defendants have failed to properly adjudicate this petition. They have failed to adhere to their own regulations and have improperly delayed the processing of the Plaintiff's I-485 Application after the Plaintiff had submitted a properly executed application. It has been 27 months since Plaintiff has filed his I-485.
14. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements and complete the processing procedures.
15. Defendants' delay in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have inappropriately refused to adjudicate the petition, thereby depriving him of the rights to which the Plaintiff is entitled.
16. The Plaintiff has been greatly damaged by the failure of Defendants to act in accord with their duty under the law.
  - (a) Specifically, Plaintiff Bin Li, has been unable to obtain legal permanent residence, travel and work without restriction and accrue time to be eligible for Naturalization as a citizen of the United States.
  - (b) Plaintiff Bin Li has been having emotion suffer during the long and seemingly endless waiting period.
17. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 *et seq.*, are unlawfully withholding action on the Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to the Plaintiff's case.
18. The Plaintiff has provided sufficient evidence of his attempt to secure adjudication of these applications at issue, all to no avail. Accordingly, the Plaintiff has been forced to pursue the instant action.

#### PRAYER

19. WHEREFORE, in view of the arguments and authority noted herein, the Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:
  - (a) requiring Defendants to properly adjudicate Plaintiff's application for action on an approved petition;
  - (b) requiring Defendants to provide the Plaintiff with a Notice of Approval;

(c) awarding Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act.

(d) granting such other relief at law and in equity as justice may require.

Respectfully submitted,



Bin Li  
Plaintiff, **PRO SE**  
41686 Joyce Avenue  
Fremont, CA 94539  
Telephone (510) 440-1380  
lb\_blb@hotmail.com